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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	Froseth et al.	)		
		)	Group Art Unit:	1761
		)		
Serial Number	09/780,273	)	Examiner:	Thaker
		)		
Filed	February 9, 2001	)	Docket No:	5390USA

For: Customized Food Selection, Ordering and Distribution System and Method

## SUPPLEMENTAL APPEAL BRIEF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450Via Facsimile  
571-273-8300  
5 Pages

Dear Sir:

The Applicants of the above-identified U.S. patent application submit this Supplemental Appeal Brief including an amended Summary of the Claimed Subject Matter in response to the Notification of Non-Compliant Appeal Brief dated April 6, 2007, and in compliance with 37 C.F.R. § 41.37(c)(1)(v) and M.P.E.P. § 1205.03. Basically, where the prior Summary grouped the common subject matter in presenting references to the supporting portions of the specification, the amended Summary, starting on page 2 below, references, although somewhat redundantly, the support for the subject matter in each independent claim. Following entry of this amended Summary, it is requested that the appeal proceed forward.

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**SUMMARY OF THE CLAIMED SUBJECT MATTER**

The present invention, as covered by claims 128-134 and 144, is directed to a customized food product. The customized food product includes at least one consumer selected food ingredient, at least one a consumer selected additive and a customer selected package in which the selected food ingredient and additive are placed. See claim 128. Figure 1 sets forth a simplified diagram of a customized selecting, ordering and distribution system 100 for a particular type of food produce, i.e., cereal. However, the system 100 can be used for virtually any type of food product. See page 17, lines 23-25. As set forth in lines 5-10 on page 3 of the specification, a consumer can select from a list, the list having choices selected from the group consisting of customized food ingredient choices, customized food product choices and customized food category choices. See, for example, Figures 10A, 10B and 10C. The resultant product can be shipped to an end user. See page 4, lines 18-19. The term "customized food product" is defined as a food product that contains any type of customized food ingredients, such as a cereal base, together with selected additives. See page 12, lines 5-8. An "additive" is defined as any type of food ingredient added to the food product at any time during manufacturing. The term "ingredient" as defined on page 9, lines 9-10 is the smallest, non-divisible part of a cereal or other food product. See also page 78, lines 13-14, noting that customized packaging options can be offered.

The customized product may include sucralose, as required in claim 131. The customized product may also include acesulfame K, as required in claim 134. See page 8, lines 24-26, noting that additives include non-nutritive (non-carbohydrate) high-potency sweeteners (such as aspartame, acesulfame K, and saccharin). See also page 21, lines 3-4, stating that the type of sweetener 130 can be varied to include aspartame or sucralose. See Figure 1. Additionally, the customized food product may be finished by the consumer, such as by popping as set forth in claim 133. Note, page 79, lines 19-21 discloses that a consumer can further "finish" the food product, such as by cooking,

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baking, grilling, heating, puffing, popping, etc., or through the use of thermal or microwave energy as set forth on page 15, line 20.

Claim 144 specifically requires that salt is selected as a flavoring. Note that additives may include acids (such as fruit-flavor enhancing edible organic acids, such as citric, malic and/or succinic acid), bases, salts, buffering systems, chelating agents, antioxidants, antimicrobial agents, gases/propellants, and so forth. See page 8, lines 16-29.

Claim set 135-137 and 145 is limited to a preferred popcorn snack comprising popcorn, sucralose and a package containing both the popcorn and sucralose. Specifically, claim 135 requires that a popcorn snack include popcorn, sucralose and a package containing the popcorn and sucralose, while claim 137 requires that the snack further includes acesulfame K. As set forth on page 12, lines 13-14, the customized food product can be any type of snack including popcorn snacks; while the additive can constitute a sweetener, which may be acesulfame K and/or sucralose as set forth on page 21, lines 3-4. As set forth on page 28, lines 16-20, a customized finishing facility 108 is supplied with food components such as the cereal base production facility 110. Various finishing components or additives are supplied from any number of finishing component suppliers 112. After the customized product is packaged and labelled with the appropriate label, it is shipped to the consumer. The snack may be finished by the consumer, such as by popping as set forth in claim 136. Note page 79, lines 19-21 which teaches that a consumer can further "finish" the food product, such as by cooking, baking, grilling, heating, puffing, popping, etc., or through the use of thermal or microwave energy as set forth on page 15, line 20.

Claims 138-143 and 146 cover a method for preparing a food product by adding sucralose to popcorn and packaging the popcorn and sucralose for distribution. Specifically, claim 138 requires a method comprising adding sucralose to popcorn and packaging the popcorn and sucralose for distribution. Additionally, claim 139 requires

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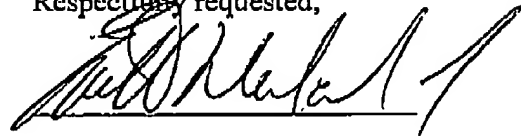
acesulfame K. Again, as set forth on page 12, lines 13-14, the customized food product includes any type of snack including popcorn snacks; while the additive can constitute a sweetener, which may be acesulfame K and/or sucralose as set forth on page 21, lines 3-4. See Figure 1 detailing a customized selecting, ordering and distribution system 100 having a custom finishing facility 108 which can be designed to handle a variety of different foods and food combinations, including snacks. See also page 19, lines 12-15. The customized facility 108 can have a modified packaging line and involve sequential addition of desired components into individual servings until the product is complete, at which point the serving is packaged and shipped, as shown in Figure 1 and set forth on page 20, lines 17-20.

Claim 141 further recites that the product requires popping by a consumer. Additionally, claim 143 further requires that finishing the product includes microwave cooking. Note that the consumer can further "finish" the food product, such as by cooking, baking, grilling, heating, puffing, popping, etc., as set forth on page 79, lines 19-21, or through the use of thermal or microwave energy as set forth on page 15, line 20.

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If there are any additional questions or concerns regarding the Appeal Brief, the Examiner is cordially invited to contact the undersigned in order to expedite matters. Again, for the reasons set forth in the Appeal, it is respectfully submitted that the present invention is patentably defined over the known prior art such that the Examiner's rejection should be reversed.

Respectfully requested,



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